

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:14cv242-FDW**

TYRONE JOHNSON,)	
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
ROY COOPER,)	
)	
Respondent.)	
)	

THIS MATTER is before the Court upon remand from the Fourth Circuit Court of Appeals.

I. BACKGROUND

On March 31, 2015, this Court denied and dismissed Petitioner's 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus (Doc. No. 10), and the Clerk of Court entered judgement the same day (Doc. No. 11.). According to the docket in this case, the Clerk mailed a copy of the Order and Judgment on March 31, 2015, to Petitioner at Warren Correctional Institution, where Petitioner was incarcerated when he filed his § 2254 Petition.

Petitioner, however, was transferred to Scotland Correctional Institution ("SCI") on January 21, 2015. (NC Dep't of Pub. Safety Offender Info., Nov. 24, 2015, Doc. No. 15-1.) There is no record in the docket of Petitioner having notified the Clerk of Court of his change of address.

The SCI log of incoming legal mail shows that on August 3, 2015, Petitioner signed for one or more items from the Clerk of Court for the Western District of North Carolina. (Incoming

Legal Mail Log, Doc. No. 15-2.) Petitioner filed a notice of appeal on August 4, 2015. (Doc. No. 12.)

On November 24, 2015, the U.S. Court of Appeals for the Fourth Circuit remanded the above-captioned case to this Court. See Johnson v. Cooper, No. 15-7233, 2015WL 7450576 (4th Cir. Nov. 24, 2015) (unpublished). Although the Fourth Circuit held that the notice of appeal was untimely, it remanded the case for the “limited purpose” of determining whether Petitioner is entitled to the benefit of Federal Rule of Appellate Procedure 4(a)(6) to reopen the time to file an appeal.

Under Rule 4(a)(6), a district court may reopen the appeal period for fourteen days if it finds that: (1) a party entitled to notice of entry of judgment did not receive notice within twenty-one days after judgment, (2) the party moved to reopen the appeal period either within 180 days of judgment or within fourteen days of receiving notice of the judgment, and (3) no party would be prejudiced. Fed. R. App. P. 4(a)(6). Petitioner shall be given the opportunity to explain why he did not file a change of address when he was transferred to SCI and why this Court should reopen Petitioner’s appeal period pursuant to Federal Rule of Appellate Procedure 4(a)(6).

IT IS, THEREFORE, ORDERED that:

- 1) Petitioner shall have thirty (30) days from the entrance of this Order to submit briefs or evidence for the limited purpose of explaining: (1) why he did not file a change of address with this Court when he was transferred to SCI, and (2) why this Court should reopen Petitioner’s appeal period pursuant to Federal Rule of Appellate Procedure 4(a)(6);
- 2) the Clerk shall mail a copy of this Order, as well as copies of Respondent’s

“Response Brief Regarding Petitioner’s Receipt in the Mail of the March 31, 2015 Final Order and Judgment” (Doc. No. 15), and exhibits (Doc. Nos. 15-1, 15-2) to Tyrone Johnson, Offender No. 0636658, at the following address:

Scotland Correctional Institution
PO Box 1808
Laurinburg, N.C. 28353

- 3) the Clerk also shall update the docket in this case to reflect Petitioner’s current address at Scotland Correctional Institution.

SO ORDERED.

Signed: December 14, 2015



Frank D. Whitney
Chief United States District Judge

